

REMARKS

Claims 1 and 5 are presently pending and under examination. The claims are presently under final rejection and this response is being timely filed with a Request for Continued Examination. Claim 1 is amended herein. Support for the amendment is to be found *inter alia*, in the drawing.

May 25, 2005 Interview

A telephonic interview was conducted on May 25, 2005 between Examiner James Brittain and Applicant's undersigned representative. With respect to this application, the rejection of claim 1 over Kapperman (U.S. Patent No. 6,004,032) in view of Bentsen (U.S. Patent No. 4,673,383), under 35 U.S.C. § 103(a) was discussed. Applicant thanks the Examiner for the courtesy and frankness extended during that interview.

In the interview, Applicant's representative noted that Kapperman does not teach a reclosable fastener and it would not be obvious to modify the tamper-evident fastener of Kapperman, which by definition and design is not reclosable, with the teachings of Bentsen. Applicant's representative also stated that the skilled artisan would not be motivated to modify the teachings of Kapperman with the ribs of Bentsen because Kapperman's design requires that at least one of the margins not be in contact with the wall (see Figure 13 in Kapperman) in order to achieve the desired property of the tearing of the package wall upon application of force sufficient to unlock the interlocked fastener. A rib of the sort that Bentsen teaches at this margin would be, at best, superfluous, and at worse might interfere with the tamper-evident aspect of the package.

The Applicant's representative and the Examiner briefly discussed the possibilities of amending the claims to include a negative limitation with respect to the Bentsen reference, however the Examiner questioned the availability of support for such an amendment.

No agreement was reached with respect to claim 1, or the rejection under 35 U.S.C. § 103(a). The Examiner advised the undersigned that he would reconsider the rejection in view of our arguments, if presented in a written response.

The Claims are Patentable Over Kapperman in View of Bentsen.

Claim 1 remains rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Kapperman in view of Bentsen. Claim 5 stands rejected in view of that combination further in view of Custer. Applicant respectfully traverses.

The claim is generally directed to a *separable and reclosable* fastener comprising a male/female closure between a pair of opposed base members having interfitting male/female formations which constitute the closure. A single flange for attachment of the closure to a web or film extends laterally from one of the two base members, each of which is provided with one single pair of ribs. One rib of each pair is positioned at a respective margin of the respective base member, the ribs being arranged to attach the fastener additionally to the web or film.

The Office Action alleges that it would have been obvious to modify the teachings of Kapperman with those of Bentsen to arrive at Applicant's invention. Contrary to the assertion in the Office Action, Kapperman does **not** teach any reclosable fastener. Kapperman teaches tamper-evident packages, with no way to access the package interior without damaging the closure arrangement or the package. (see Column 1, lines 29-37). One example of such a package, according to Kapperman, includes a closure comprising a zipper-type mechanism. Kapperman specifically defines the zipper-type mechanism at Column 4, lines 39-43 as "a structure having oppositely disposed interlocking or mating profiles, which under the application of pressure will interlock and block access between the profiles." Thus, the zipper-type mechanisms of Kapperman are described as "*interlocking*," which once closed, cannot be separated without mechanical failure of the closure. The skilled artisan would readily distinguish such closures from the separable and reclosable *interengaging* closures of the instant claims, which can be repeatedly opened and reclosed.

The Office Action asserts that Kapperman teaches a pair of base members secured to the package walls respectively wherein a single flange extends upwardly from the female member and is inherently capable of being used for attachment of "the closure" to a web or a film through the statement that the female profile is secured to a package wall. Applicant respectfully, but emphatically, asserts that this is a demonstrably inaccurate characterization of Kapperman's teachings.

Applicant's claim requires that a *closure* be attached to a web or film through the single flange on one of the members. It is evident from a proper reading of Kapperman that the closure cannot be so attached – as the closure cannot be interlocked prior to the manufacture of the bag or package. Rather, at best, only the *female member* (“female formation” of the instant claims) of the two-part male/female closure could possibly be attached in this manner. Kapperman specifically teaches that the male and female member are each (separately) secured to their respective walls, after which the walls are joined together to form the package.

Each of the first closure member 51 and second closure member 53 is secured to a respective wall section 56, 58 of a flexible package. For example, wall section 56 may correspond to first panel section 34 (Fig 1), while wall section 58 corresponds to second panel section 36 (Fig 1). Each of first and second closure members 51, 53 may be secured to its respective wall section 56, 58 through a variety of processes such as heat sealing. . In the specific embodiment illustrated in Fig. 2, first closure member 51 is secured to wall section 56 by sealant layer 60. Analogously, second closure member 53 is secured to wall section 58 through sealant layer 62.
(Column 4, lines 49-64)

See also, for example, Kapperman's disclosure at Column 7, lines 2-9, which provides:

Specifically, closure mechanism 50' has a first closure member 51' and a second closure member 53'. First closure member 51' has a male profile 52', and second closure member 53' has an oppositely disposed female profile 54'. First and second closure members 51' and 53' are attached to package walls 56', 58', respectively, through sealant layers 60', 62', respectively.

There is no teaching that “the closure” (including both the male and female portions) is ever attached through the alleged single flange depicted in the configuration of figure 11. Moreover, the closure in figure 11 is not in the “mateably interlocked” position nor are the male and female members attached to each other in a manner that would allow for attachment to a web or film via the single flange. Rather, as the discussion at column 9, line 56 through column 10, line 11 explains, the closure is constructed and arranged to prevent unintended interlocking of the male and female profiled through the inclusion of post 172. Post 172 must be manually removed by the end user in order for the female profile to mateably slide over the male profile (Column 10, lines 13-24).

Thus, contrary to the assertion in the Office Action, Kapperman does not teach a reclosable fastener, nor can it be said that the alleged flange structure depicted in Figure 11 can *inherently* be used to attach “the closure” to the package. The closure cannot be interlocked prior to the construction – both from the perspective of common sense (because it wouldn’t open again by design), and the presence of the post 172 (it can’t be interlocked at this point). The male and female components of the closure *must* be separately attached through the sealant layers as Kapperman clearly describes.

The attachment of the reclosable fastener through a single flange on only one of its members is a point of novelty in the instant claims. It is apparent from the above discussion not only that Kapperman does not teach a reclosable fastener, but he does not teach any such attachment of a reclosable fastener, nor any flange that may be so used. The skilled artisan simply would not look to Kapperman in trying to make improved *reclosable* fasteners.

Moreover, there is nothing in Bentsen which teaches or suggests the features missing from Kapperman, and thus the combination cannot teach the claimed invention.

Applicant further respectfully, but emphatically asserts that there is no motivation to combine the teachings of Bentsen to modify the tamper-resistant closure of Kapperman. The Office Action points to Figure 8 in Bentsen and offers this as a motivation to combine because allegedly it teaches a reclosable fastener with a single pair of ribs, one at each margin to secure the base member to the web or film while permitting the fastening strip to be spirally wound and retained in a such a configuration by retaining the spirally wound assembly against later displacement as would permit entanglement during payoff or unwinding of the strip from a supply roll to which the zipper strip assembly is subjected downstream. The Office Action further asserts that it would be beneficial to prevent entanglement of the fastener elements so as to motivate one to modify the closure of Kapperman with the teachings of Bentsen.

In Figure 8, Bentsen depicts zipper strips (i.e. closures) wherein the fusible ribs, which project away from the complementally separably and reclosable zipper strips, cooperate in retaining the spirally wound strip assembly against such lateral displacement as would permit entanglement during payoff or unwinding. However, as is clear from Figure 8, the intercooperation of the ribs in reducing such lateral displacement would not be present where the spirally wound material was comprised of only male or only female portions of the

zipper strips, such as would be required in the manufacture of a Kapperman package. As discussed above, assembly of a package in accordance with Kapperman could not involve the use of interlocked fasteners or strips as taught by Bentsen. These would be plainly inoperable for assembly of a Kapperman tamper-evident package, which is not separable and reclosable. Accordingly, the skilled artisan would not be motivated to combine the teaching of Bentsen with those of Kapperman for two reasons: First, Kapperman is not lacking in any way in terms of means for attachment of the male and female members to the bag or package walls. Kapperman does not require, and would not benefit from, the ribs of Bentsen. Second, there would be no benefit to using the ribs of Bentsen, in terms of preventing entanglement, because the male and female members used to make Kapperman's nonreclosable are necessarily separately on spools or reels, and not as complete closures. Thus, the potential intercooperation of the ribs in preventing lateral displacement would not be present.

In view of Applicant's position that claim 1 is allowable over Kapperman in view of Bentsen, claim 5 would be allowable over that combination in view of Custer. Custer provides nothing to overcome the missing elements of Kapperman and Bentsen.

In accordance with the above, Applicant respectfully requests reconsideration of the rejection of the claims under 35 U.S.C. § 103(a) over Kapperman in view of Bentsen. The rejection must be withdrawn, as neither reference, nor the combination, teaches each and every limitation of Applicant's claims. Further, in view of the above, it can be seen that there would be no motivation to combine the teachings of Bentsen's sealing ribs with Kapperman's tamper-evident package closure, and not expectation of success in any attempt. Similarly, claim 5 is patentable over that combination of references with the addition of Custer, which adds nothing sufficient to save the *prima facie* case.

Conclusion:

Applicant considers this paper to be fully responsive to the outstanding Office Action. All claims are in condition for allowance and an early and favorable Notice to that end is earnestly solicited. The Examiner is invited to resolve any minor outstanding issues with Applicant's undersigned representative via telephonic conference during normal business hours at 215-557-5986.

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**PATENT
REPLY FILED UNDER EXPEDITED
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Respectfully submitted,

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